

Attachment 3 - Letter from Acting Secretary to Senator Carr 2021



Australian Government
Attorney-General's Department

Acting Secretary

25 May 2021

Senator the Hon. Kim Carr
Deputy Chair
Legal & Constitutional Affairs Committee
Labor Senator for Victoria

Dear Senator

Attorney-General's Portfolio appearance at Budget Estimates hearing

Thank you for your letter of 24 May 2021, advising of specific information that Opposition Senators have requested be made available at the upcoming Budget Estimates hearing.

1. The number and levels of staff currently employed by AGD

As at 30 April 2021, the Attorney-General's Department employed 1835 employees. This number excludes casual employees, employees on long term leave, contractors, labour hires and secondees. A breakdown by level is provided below:

Actual Classification			
Classification	HC	FTE	% HC
APS1	1	0.79	0.05%
APS2	6	5.60	0.33%
APS3*	93	87.39	5.07%
APS4	223	215.04	12.15%
APS5	204	196.14	11.12%
APS6	341	320.88	18.58%
EL1	483	458.59	26.32%
EL2	293	278.73	15.97%
SES1	153	146.82	8.34%
SES2	31	30.80	1.69%
SES3**	7	7.00	0.38%
Total	1835	1747.78	100.00%

*Graduates included

** includes two SES Band 3 officers employed in Chief Counsel roles in AGS Group.

2. Funding levels for the Australian Human Rights Commission

The Australian Human Rights Commission (the Commission) is an independent statutory body within the Attorney-General's portfolio, established by the *Australian Human Rights Commission Act 1986* (the AHRC Act). You have asked for details relating to funding levels for the Commission.

AHRC GOVERNMENT FUNDING

Financial year	Government appropriation/funding (\$'000)*
2021-22	19,026
2020-21	17,489
2019-20	16,538
2018-19	16,709
2017-18	14,391
2016-17	14,593

* The figures presented exclude AHRC's own-source revenue arising from service fees and direct cost recoveries. Further information is provided in the AHRC's annual reports and the AG's Portfolio Budget Statements.

3. Details regarding the implementation of the recommendations of the Respect@Work National Inquiry into Sexual Harassment in Australian Workplaces

The Government's response to the *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* report – entitled 'Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces' – released on 8 April 2021 sets out the Government's long-term commitment to building safe and respectful workplaces. The Government has agreed to in full, in part or in principle, or noted, all 55 recommendations in the *Respect@Work* report.

In the 2021-22 Budget, the Government is providing more than \$20.5 million over four years to implement the Government's response to the *Respect@Work* report. This builds on the initial \$2.1 million in the 2020-21 Budget to implement key recommendations from the report.

The funding in the 2021-22 Budget comprises:

- \$7.3 million over four years to support the *Respect@Work* Council, implement a range of practical measures to address workplace sexual harassment, and implement amendments to strengthen the legislative and regulatory framework.
- \$0.2 million in interim funding in 2021-22 to continue the targeted delivery of support for women on work-related matters, including workplace sexual harassment.
- \$1.7 million over two years to the Commonwealth work health and safety (WHS) regulator, Comcare, to deliver National Forums for Commonwealth, state and territory WHS Inspectors on sexual harassment, and training for employers and managers covered by Commonwealth WHS laws to better understand and meet their obligations. This funding has already been provided by the Government.

- \$6.0 million over four years to the Workplace Gender Equality Agency (WGEA) and the Australian Public Service Commission to strengthen public-sector reporting on sexual harassment prevalence, prevention and response.
- \$5.3 million to the Department of Social Services to be provided to OurWatch, Australia's National Research Organisation for Women's Safety (ANROWS) and 1800RESPECT to build the evidence base and develop primary prevention initiatives to respond to sexual harassment.
- Additional legal assistance funding over four years for specialist lawyers with workplace and discrimination law expertise.

The Government is already taking action to implement its response to the Respect@Work report. For example, the Government:

- has established the Respect@Work Council, and asked it to take forward key recommendations
- has engaged with states and territories on the Respect@Work report, including through discussions in National Cabinet
- is developing a package of priority legislative reforms to be introduced into Parliament in June (subject to consultation), and
- has funded the Australian Human Rights Commission to develop the Respect@Work website, develop training and educational materials and conduct the next national survey on sexual harassment (due to be completed in 2022).

Finally, the Respect@Work report recognises that all Australian Governments and employers have a role to play in addressing sexual harassment, with recommendations directed to a range of actors in addition to the Commonwealth Government, including state and territory governments, independent government agencies and regulators, education providers and business and industry. To support national action, the Government is working with state and territory governments, as well as the private sector. Industry groups and peak bodies have also been taking action in response to the report's recommendations.

4. Appointments to the Administrative Appeals Tribunal, including details of when the Attorney-General has – in accordance with paragraph 7 of the 2019 Protocol for Appointments to the AAT – recommended the appointment of candidates who have not been recommended by the President of the Tribunal (or have not been on “the register”) since that Protocol was first adopted in 2019

The Government has announced the appointment or reappointment of 51 members of the Administrative Appeals Tribunal (AAT) during 2020 and 2021 (to 13 May 2021). Recommendations by the AAT President to the Attorney-General about reappointments and future appointments are an integral part of the appointment process, which is a Cabinet process. There is also a strong public interest in the President of the AAT and the Attorney General being able to have frank communications about appointments and reappointments to the AAT. The department will be unable to answer this question on the basis it would disclose deliberations of the Cabinet.

5. Details of all applications for legal assistance made by ministers and former ministers under Division 2 of Part 5 of the Parliamentary Business Resources Regulations 2017 dating back to the 2017/18 financial year (including applications made but rejected)

A list setting out all approved applications for legal assistance dating back to 1 July 2017 is enclosed. No application for legal assistance by a current or former minister during that period was declined by the approving minister.

6. Details of all applications for legal assistance that have been made, including but not limited to applications that have been approved, for ministerial staff under Appendix E of the Legal Services Direction 2017

Applications for legal assistance under Appendix E to the *Legal Services Directions 2017* from persons employed by a Minister on behalf of the Commonwealth as a member of the Minister's staff under the *Members of Parliament (Staff) Act 1984* are considered by the Minister for Finance (as the Special Minister of State). Questions about such applications should be directed to the Minister for Finance or the Department of Finance.

7. Information about the family law system, including but not limited to the measures outlined in the 2021/22 Budget papers

The department will be able to provide information about the family law system, including the measures outlined in the 2021/22 Budget papers. These measures include investment of \$85 million over three years in the Family Advocacy Support Services, \$101.4 million over four years for Children's Contact Services, and more than \$60.8 million over four years to fund the reform of case management in the federal family law courts, to improve outcomes and better meet the needs of families and children.

8. The Register of Lobbyists

The department is implementing the recommendations of the 2020 Australian National Audit Office (ANAO) follow-up report on the department's management of the Register of Lobbyists (the Register). These recommendations require the department to:

- establish effective governance processes to implement the recommendations of a 2018 ANAO audit, which in turn requires the preparation of a communications strategy and evaluation framework for the Lobbying Code of Conduct (the Code), and advice to Government on compliance risks, and
- provide advice to the Government about the sufficiency of the current Code.

The department expects to have completed implementing the recommendations of the 2020 ANAO report by mid-2021. To date, the department has:

- finalised an implementation plan for delivery of the ANAO recommendations
- prepared a communication strategy for the Code
- developed a preliminary evaluation framework and set of performance measures, and
- provided initial advice about the sufficiency of the Code to the then Attorney-General in January 2021, ahead of developing more specific advice about options to improve the operation and administration of the Code.

9. and 10. Details of all costs incurred by AGD, including hours spent by departmental officers, in relation the prosecution of Witness K and on the prosecution of Bernard Collaery

You have asked for details of all costs incurred by AGD, including hours spent by departmental officers, in relation to the prosecutions of Mr Collaery and Witness K.

The department does not keep records of the numbers of hours that staff members work on particular matters or tasks. I can advise that as at 14 May 2021, the total external legal costs incurred by the Commonwealth in the prosecutions of Collaery and Witness K total approximately \$3,670,379.91 excluding GST. This amount includes the services of the Australian Government Solicitor and external legal services. It includes solicitor and counsel fees and legal disbursements. We are unable to separate the external legal costs between the Collaery and the Witness K matters because the Australian Government Solicitor established one file to cover both these matters when they first commenced.

11. Details of all expenses incurred by the Commonwealth in respect of its participation in the High Court challenge relating to Queensland's border closure, *Mineralogy Pty Ltd v Queensland*, High Court No B29/2020, and *Travel Essence Pty Ltd v Young*, High Court No S87/2020, including the payment of any costs orders

As has been indicated by the Attorney-General in answers to previous questions (for example, Senate Question 3345), the costs to the Commonwealth in *Mineralogy v Queensland* and *Travel Essence v Young* are inextricable from the costs to the Commonwealth in *Palmer v Western Australia*, the challenge to the Western Australian border closure.

The proceedings in *Mineralogy v Queensland* and *Travel Essence v Young* were withdrawn without any orders by the High Court as to costs. However, as indicated, the costs of the legal services provided by the Australian Government Solicitor, the hours spent by solicitors acting for the Commonwealth on the matter, and the overall cost to the Commonwealth of these matters are inextricable from the costs to the Commonwealth of its involvement in *Palmer v Western Australia*, as the matters were progressed together. Invoices for the work covered all three matters and time recorded was not necessarily attributable to a particular matter. Furthermore, counsel worked concurrently on the matters of *Palmer v Western Australia*, *Mineralogy v Queensland* and *Travel Essence v Young*. Counsel hours and fees were not necessarily attributable to a particular matter.

On 21 October 2020 the then Attorney-General made a public interest immunity claim by letter to the then Chair of the Committee (attached). The claim related to answers to questions on *Palmer v Western Australia* regarding the Western Australian border restrictions in relation to:

- payments made to external lawyers, including the Australian Government Solicitor
- disbursements paid to external counsel, and
- any other expenses incurred by the Commonwealth.

On 25 August 2020, in *Palmer v Western Australia*, the Federal Court made orders that the Commonwealth pay the parties' costs of and incidental to a directions hearing before it on 7 August 2020 (relating to the Commonwealth's withdrawal from the matter); the scope of the public interest immunity claim extends to this order.

The claim was made on the basis that there is a risk that disclosure of the Commonwealth's actual or estimated costs could prejudice its position in negotiations with the parties on the payment of costs or any proceedings to resolve costs if negotiations fail.

12. Provide answers to any outstanding Questions on Notice

As at 5pm on Tuesday 25 May, the portfolio had one question on notice outstanding (LCC-AE21-45). This response will be tabled as soon as possible.

The action officer for this matter is Anne Sheehan, Assistant Secretary, Strategy and Governance Branch who can be contacted on 02 6141 3260.

Yours sincerely

Iain Anderson